HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.1966 OF 2005

PETITIONERS

1. Mahetarin Bai, Widow of Shiv Charan Kaushik, Aged about 55 years,
2. Dev Anand, S/o Late Shiv Charan Kaushik, Aged about 30 years,

Both R/o Village Chichirda, PO : Saida, PS – Chakarbhata, Tehsil – Takatpur, Dist : Bilaspur-(C.G.)

versus

RESPONDENTS

1. The Collector, Dist : Bilaspur –(C.G.)
2. The Tehsildar, Takhatpur, Dist. Bilaspur-(C.G.)
3. The Sarpanch, Gram Panchayat – Chichirda, Tehsil – Takatpur, Dist : Bilaspur-(C.G.)

Present : Mr. Anil Singh, learned counsel for the petitioners.
Mr. Yashwant Singh, learned Government Advocate for respondents No.1 and 2.
Mr. Somnath Verma, learned counsel for respondent No.3.

ORAL ORDER
(Passed on 21st March, 2006)

The case of the petitioners in brief is that they are the owners of the land comprising Khasra No.442/1, 442/2 and 442/3, situate in Village Chichirda, Taluka Takhatpur, District Bilaspur. It is alleged that the third respondent, who is the Sarpanch of Gram Panchayat Chichirda, is constructing a building in the Government land bearing Khasra No.417 to house a Government girls' school as an agent of the Government and if that construction is allowed and building comes-up, it would violate the

easementary rights hitherto enjoyed by the petitioners. So alleging, the writ petition is filed seeking intervention of the Court.

(2) This Court cannot be converted into a Civil Court to undertake fact finding and to enforce easementary rights claimed by the petitioners. Whether the proposed construction would violate any of the easementary rights of the petitioners is a question of fact and resolution of which would necessarily involve permitting the parties to lead evidence and subjecting the parties to cross-examination by each other. The proper forum to claim easementary rights of the petitioner is the jurisdictional Civil Court. In that view of the matter, I dismiss the writ petition, however, reserving liberty to the petitioners to work-out their legal remedies before the jurisdictional Civil Court. All the contentions raised in this writ petition are left open to be agitated before the jurisdictional Civil Court. No costs.

Sd/-
Chief Justice

Gopal